

Application for Index Number

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[INDEX NUMBER]

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Title of Action or Proceeding

STATE OF NEW YORK
SUPREME COURT WARREN COUNTY
M. S.,

Plaintiff,

-against-

THE ROMAN CATHOLIC DIOCESE OF ALBANY,
NEW YORK, INC.,
and,

THE CHURCH OF OUR LADY OF THE ANNUNCIATION,
QUEENSBURY, NEW YORK, Defendants.

Type below name and address of Attorney(s) for Plaintiff

William L. Nikas, Esq.
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Hudson Falls, New York 12839

Jerome F. O'Neill, Esq.
76 St. Paul St., 7th floor
PO Box 369
Burlington, VT. 05402

[INDEXED AND ENTERED]
(Clock Date)

Indexed and entered

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Do Not Detach

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**STATE OF NEW YORK
SUPREME COURT****WARREN COUNTY**

M. S.

Plaintiff**-against-****SUMMONS****Index No.:****THE ROMAN CATHOLIC DIOCESE OF ALBANY,
NEW YORK, INC.,****and****THE CHURCH OF OUR LADY OF THE ANNUNCIATION,
QUEENSBURY, NEW YORK****Defendants.**

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is annexed hereto and made a part hereof, and to serve a copy of your answer on the plaintiff's attorney within twenty (20) days after the service of this summons and complaint, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Warren County as the place of trial.

The basis of the venue is the Plaintiff's residence; the situs of the claims; and the location of the real property subject to the action, all of which are located in the Town of Queensbury, Warren County, New York.

Dated this 23rd day of August, 2019.

**JEROME F. O'NEILL, ESQ.****Attorney for the Plaintiff****76 St. Paul St., 7th Floor****P.O. Box 369****Burlington, VT 05402-0369****Tel: (802)--658-0220****WILLIAM L. NIKAS, ESQ.****Attorney for the Plaintiff****116 Oak Street - P.O. Box 267****Hudson Falls, New York 12839-0267****Tel. (518) 747-4169**

STATE OF NEW YORK**SUPREME COURT****WARREN COUNTY****M. S. ,****Plaintiff,****-against-****COMPLAINT****THE ROMAN CATHOLIC DIOCESE OF ALBANY,
NEW YORK, INC.,****Index #****and,****THE CHURCH OF OUR LADY OF THE ANNUNCIATION,
QUEENSBURY, NEW YORK,****Defendants.**

The Plaintiff, M.S. (anonymous herein per NYS Civil Rights Law §50-b, subd.1), by his attorneys William L. Nikas, Esq. and Jerome F. O'Neill, Esq., as and for a complaint against the Defendants, jointly and severally, respectfully alleges the following:

PARTIES

1. The Plaintiff M. S. is an individual residing in the Town of Queensbury, County of Warren, and State of New York.
2. The Defendant The Roman Catholic Diocese of Albany, New York, Inc. (hereinafter referred to as the "Defendant Diocese") is a special act corporation with its principal office located in the City of Albany, State of New York.
3. The Defendant The Church of Our Lady of the Annunciation, Queensbury, New York (hereinafter referred to as "Defendant Annunciation") is a domestic religious corporation with its principal place of worship located at 80 Aviation Road, Town of Queensbury, County of Warren and State of New York.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION

4. Upon information and belief, the Defendant Annunciation is a Roman Catholic parish under the jurisdiction of the Bishop of Defendant Diocese.

5. Upon information and belief, the Bishop of Defendant Diocese employed Gary Mercure (hereinafter referred to as "Father Mercure") in 1974 as a Roman Catholic priest.

6. Upon information and belief, Defendant Diocese chose to employ Father Mercure as one of its priest employees under the direction, supervision and control of Defendant Diocese during the approximate period 1974 to 2008.

7. Upon information and belief, Defendant Diocese chose to assign Father Mercure as one of its employees to be the pastor of the Defendant Annunciation for the approximate period of 1982 - 1991 at the Defendant Annunciation's church located in the Town of Queensbury, Warren County, New York.

8. During the said period when Defendant Diocese chose to employ Father Mercure as pastor at the Defendant Annunciation's church, the Plaintiff was a parishioner in regular attendance at the said church owned and operated by the Defendant Annunciation in the Town of Queensbury, Warren County, New York.

9. At all times herein mentioned and relevant hereto, the Plaintiff was raised, baptized and confirmed in the Roman Catholic faith.

10. During the said period when Defendant Diocese chose to employ Father Mercure as the pastor at the Defendant Annunciation's church, Father Mercure chose to select Plaintiff to serve as an altar boy during regular masses conducted by Father Mercure.

11. At all times herein mentioned and relevant hereto, the Defendant Diocese chose to expressly and impliedly represent to its parishioners, including the Plaintiff, that all of its priest employees, including Father Mercure, were priest employees of good standing, were persons of the highest morality, were celibate, and were men who could be entrusted with the religious, moral and physical care of youths entrusted to them.

12. At all times herein mentioned and relevant hereto, the Defendant Annunciation chose to expressly and impliedly represent to its parishioners, including the Plaintiff, that all of its priest employees, including Father Mercure, were priest employees of good standing, were

persons of the highest morality, were celibate, and were men who could be entrusted with the religious, moral and physical care of youths entrusted to them.

13. By reason of Defendant Diocese's choice to make the said representations and of the conduct of the Defendant Diocese and the Defendant Annunciation, which were designed to gain the Plaintiff's and the Plaintiff's parents' trust, obedience, and confidence, the Plaintiff, who was an impressionable minor at the time of being an altar boy for Father Mercure, submitted his complete trust to the will, direction and control of Father Mercure. As a result, the Plaintiff was conditioned to comply with, and obey, the direction of any of the Defendants' clerical employees, including Father Mercure, and to look to them as authority figures.

14. During the approximate period of 1986 to 1989, while the Plaintiff was serving as a parishioner and altar boy at the Defendant Annunciation's church, Father Mercure, while acting as an agent of the Defendants with the power conferred upon him by the Defendants, used his position of trust, power, and authority over the Plaintiff to sexually assault and to rape Plaintiff on numerous occasions.

15. During said period of 1986-1989, Father Mercure's sexual abuse and rape of the Plaintiff was performed without Plaintiff's free consent, as Plaintiff was a mere minor and thus unable to give valid, legal consent to such sexual abuse.

16. As a parishioner and altar boy at said church, under the jurisdiction of both the Defendant Diocese and the Defendant Annunciation where Father Mercure was employed and worked, the Plaintiff was under Father Mercure's direct supervision, care and control, thus creating a fiduciary relationship and a special care relationship between the Plaintiff and each of the Defendants. Additionally, as a minor child under the custody, care and control of the Defendants, the Defendants stood *in loco parentis* with respect to the Plaintiff while the Plaintiff was attending church and church-related functions at the Defendant Annunciation church.

17. As the responsible parties and employers who were in a position to supervise and control Father Mercure, and who had said special care and fiduciary relationships with the Plaintiff, the Defendants each owed enhanced and special duties to the Plaintiff.

18. Plaintiff is informed and believes, and on that basis alleges, that prior to and during the sexual abuse of the Plaintiff by Father Mercure, the Defendants knew or should have known that Father Mercure had violated his role as an employee in the position of a priest,

mentor and religious advisor, and had used his position of authority and trust, while acting on behalf of the Defendants, to gain access to children, including the Plaintiff, on and off the church facilities and grounds, during which times he engaged in sexual assaults and abuse of such children, including the Plaintiff.

19. Plaintiff is informed and believes, and on that basis alleges, that prior to and during the sexual abuse of the Plaintiff by Father Mercure, the Defendants had known for decades that Defendant Diocese employed sexual predators of minor boys, and that a significant percentage of all of the priest employees that the Diocese employed throughout the entire Diocese had violated their roles as employees, priests, mentors and religious advisors, and had used their positions of authority and trust, while acting on behalf of the Defendants, to gain unfettered access to children, during which times they engaged in sexual assaults and abuse of such children.

20. The Defendants each had a duty to disclose to the Plaintiff, to his parents and others, these facts of widespread clergy child abuse among its priest employees, but negligently and/or intentionally suppressed, concealed or failed to disclose this information. The duty to disclose this information arose by reason of the special, trusting, confidential, fiduciary, and/or *in loco parentis* relationship between the Defendants and the Plaintiff.

21. Had any reasonable person, including the Plaintiff and Plaintiff's parents, been apprised of the extent of credible accusations of clergy child abuse known to the Diocese to exist among the ranks of its priest employees, such a person would have implemented measures to prevent any unsupervised contact between children and *any* priest of the Diocese.

22. With actual knowledge that a significant percentage of its priest employees had previously been credibly accused of child sex abuse, including Father Mercure, and that said priest employees had previously engaged in sexual misconduct and abuse of other minors, the Defendants did knowingly fail to implement reasonable safeguards to avoid sexual assaults in the future by its priest employees, including but not limited to, prohibiting, preventing or avoiding placement of its priest employees, including Father Mercure, in any function or environment in which contact with children would be an inherent aspect of that function or environment.

23. Defendants and each of them also chose to implement various measures and practices designed to make, and which effectively made, the sexual misconduct of its priest employees, including Father Mercure, impossible to detect, including but not limited to:

- (a) Choosing to permit its priest employees, including Father Mercure, to remain in positions of authority and trust after the Defendants knew or should have known that a significant percentage of the Diocese's priest employees, including Father Mercure, had previously committed sexual assaults on minors;
- (b) Choosing to allow its priest employees, including Father Mercure to operate in separate, unsupervised and secluded environments while placing them in charge of children, and while mentoring and advising children in religious and youth programs where they purported to supervise the children, which allowed its priest employees, including Father Mercure, to sexually interact with and sexually assault the children, including the Plaintiff;
- (c) Choosing to allow its priest employees, including Father Mercure, to come into contact with minors, including the Plaintiff, without adequate supervision, including allowing its priest employees to take boys alone to secluded locations and to bring boys into the priest's living quarters;
- (d) Choosing to conceal from law enforcement, from the Defendants' parishioners, and from the Plaintiff's parents, the fact that the Plaintiff and others were or may have been sexually assaulted after the Defendants knew that its priest employees, including Father Mercure, had been sexually abusive towards others, thereby enabling the Plaintiff to continue to be endangered and sexually assaulted, and creating the circumstance where the Plaintiff was less likely to receive medical/mental health care and treatment, thus exacerbating the harm to the Plaintiff;
- (e) Choosing to hold out its priest employees, including Father Mercure, to the Plaintiff and his parents and to the religious community as being in good standing and trustworthy;

- (f) Choosing not to take reasonable steps and to implement reasonable safeguards to avoid acts of sexual misconduct by its priest employees, including Father Mercure, with altar boys who were minor children;
- (g) Choosing not to put in place a system or procedure to supervise or monitor its priest employees to ensure that they did not commit sexual misconduct or sexually abuse minors in the Defendants' care, including the Plaintiff.
- (h) Choosing not to transfer its priest employees, including Father Mercure, to unsuspecting parishes in other locations when the Defendants received information of acts of sexual assaults committed by its priest employees, including Father Mercure.

24. During the period of sexual abuse of the Plaintiff at the hands of Father Mercure, the Defendants had the authority and the ability to obstruct or stop Father Mercure's sexual assaults upon the Plaintiff, but negligently and/or willfully choosing not to do so, thereby allowing Father Mercure's sexual abuse of the Plaintiff to continue unabated. This failure was a consequence of the Defendants' plan, policy and practice to conceal wrongful acts of its sexually abusive priest employees, to avoid and inhibit detection, to block public disclosure, to avoid scandal, to avoid the disclosure of their tolerance of child sexual abuse by its clergy, to preserve a false appearance of propriety, and to avoid investigation and action by public authority, including law enforcement. Plaintiff is informed and believes, and on that basis alleges, that such actions were motivated by a desire to protect the reputation of the Defendants and each of them, and to protect the assets and financial support of the Defendants, which actions fostered an environment where such abuse could continue to occur.

25. Subsequent to his sexual abuse at the hands of Father Mercure, the Plaintiff began to experience multiple mental, emotional and psychological problems due to the sexual abuse he suffered at the hands of Father Mercure, including, but not limited to: Plaintiff being angry; Plaintiff experiencing frequent anxiety; Plaintiff experiencing depression; Plaintiff feeling helpless; Plaintiff experiencing sleeplessness; and Plaintiff having significant trust and control issues. Plaintiff began to discover that his mental and/or emotional issues were and are directly caused by the childhood sexual abuse he suffered at the hands of Father Mercure.

26. As a direct result of the sexual abuse of the Plaintiff by Father Mercure, the Plaintiff has difficulty in reasonably or meaningfully interacting with others, including those in positions of authority over the Plaintiff, including supervisors, and in engaging in intimate, confidential and familial relationships due to the trauma of childhood sexual abuse inflicted upon him by the Defendants through their employee and agent Father Mercure. This inability to interact has created conflict with Plaintiff's values of trust and confidence in others, and has caused Plaintiff substantial emotional distress, anxiety, nervousness and fear. As a direct result of the Plaintiff's sexual abuse by Father Mercure, the Plaintiff has experienced severe issues with his personal life, including issues with trust and difficulties in maintaining meaningful relationships. These feelings have caused the Plaintiff substantial emotional distress, anxiety, nervousness, fear, and the oftentimes uncontrollable urge to self-medicate with drugs or alcohol.

27. As a direct and proximate result of the Defendants' tortious acts, omissions, wrongful conduct and breaches of their duties, whether willful or negligent, the Plaintiff's employment and personal development has been and will be adversely affected. The Plaintiff has lost or will lose wages and employment opportunities as a result of the abuse he has suffered at the hands of the Defendants through their employee and agent Father Mercure.

FIRST CAUSE OF ACTION

FRAUDULENT REPRESENTATION/FRAUDULENT CONCEALMENT

28. Plaintiff realleges and incorporates by reference herein each and every allegation contained hereinabove as though fully set forth and brought in this cause of action.

29. Plaintiff is informed and believes, and on that basis alleges, that the Defendants knew, or had reason to know, of the propensities and proclivities of a significant percentage of its priest employees, including Father Mercure, to engage in sexual assaults of minors prior to and including the period of 1986-1989.

30. Prior to and continuing throughout the Plaintiff's attendance as a parishioner and as an altar boy at the Defendant Annunciation's church facilities, the Defendants made false and

material representations of fact that its priest employees, including Father Mercure, were priests and religious mentors who could be trusted with minor parishioners and altar boys, including the Plaintiff.

31. Prior to and continuing throughout the Plaintiff's attendance as a parishioner and altar boy at the Defendant Annunciation's church facilities, the Defendants made false and material representations of fact to the Plaintiff and to the Plaintiff's parents that said church facilities provided safe, wholesome, and healthy environments for minor parishioners and altar boys such as the Plaintiff.

32. Prior to and continuing throughout the Plaintiff's attendance as a parishioner and as an altar boy at Defendant Annunciation's church facilities, the Defendants made false and material representations of fact and fraudulent omissions and concealments of fact, and failed to disclose information relating to prior sexual abuse and the propensities and proclivities of a significant percentage of its priest employees, including Father Mercure, to engage in sexual assaults on minors.

33. Prior to the time that the Plaintiff began attending the Defendant Annunciation's church and church facilities as a parishioner and altar boy, the Defendants had actual knowledge of the extensive pedophilia and child sexual abuse committed by a significant percentage of its priest employees, not only within the ranks of the priest employees employed by the Defendant Diocese, but also throughout the Catholic Church in the United States..

34. Prior to and including 1985, most, if not all, of the Catholic Bishops in the United States, including the Bishop of the Defendant Diocese, were members of the National Conference of Catholic Bishops, an organization formed "to unify, coordinate, encourage, promote and carry on Catholic activities in the United States" (hereinafter referred to as the "NCCB").

35. In 1985, the NCCB commissioned a committee to study an issue which it defined as "The Problem Of Sexual Molestation By Roman Catholic Clergy". The committee warned that its study revealed "extremely serious issues" which "place the Church in the posture of facing extremely serious financial consequences as well as significant injury to its image".

36. In mid-1985, the above described NCCB committee produced a written report (hereinafter referred to as the "Confidential Report"), a copy of which was provided to the Bishops comprising the NCCB membership, including to the Bishop of the Defendant Diocese.

37. The Confidential Report reported to the NCCB membership that the national media in the United States had created a general awareness and consciousness of the public with respect to the prevalence of sexual abuse of children within various institutions, including the Catholic Church.

38. The Confidential Report acknowledged the awareness and experience in all of the dioceses of the Catholic Church, including the Defendant's diocese, which demonstrated that sexual abuse by its clergy was not only prevalent for over a century, but had taken a variety of forms. The prior knowledge and awareness of the scope of the problem of sexual assault on children by Catholic clergy are reflected in the facts that:

- (i) complaints of clergy abuse had been received by the Catholic Church, including by the Defendant Diocese, since the 1930's;
- (ii) the Code of Canon Law adhered to by the Defendants acknowledges the "solicitation" of minors to engage in sexual abuse committed by its clergy, and established rules designed to maintain the secrecy of such abuse;
- (iii) in the 1970's, the National Conference of Catholic Bishops implemented and funded confidential church-run programs throughout the country for the treatment of its clergy who had engaged in sexual abuse of children;
- (iv) in the early 1980's, the National Conference of Catholic Bishops provided all dioceses with legal advice on how to deal with complaints of clergy abuse, including directives regarding the retention or destruction of reports of therapy treatment of its clergy; and,
- (v) in 1985, the Defendants' official national news media, the National Catholic Reporter, characterized a publicized criminal case of clergy sexual abuse as part of a national crisis facing the institution of all Catholic dioceses.

39. The Confidential Report further acknowledged that due to the increasing public awareness of the sexual abuse issue and the potentially devastating consequences to its image and to its finances, it was now, as of 1985, incumbent upon the Catholic Church to implement a national, cohesive and cooperative strategy among its dioceses to prevent public disclosure or damaging information concerning the existence of sexual abuse of children by its clergy.

40. The Confidential Report disclosed and warned against the existence of various and consistent actions, techniques and practices implemented, coordinated and choreographed by its diocese members, including a discussion of the known practices of moving files containing potentially dangerous material to “secret archives” in order to claim immunity from subpoenas or lawsuits, and/or sanitizing or purging files of potentially damaging material, all designed to conceal the truth of clergy sexual abuse of children in order to avoid financial liability and to protect their clergy.

41. The warnings and recommendations set forth in the Confidential Report were not heeded; thus a fertile environment for the molestation of children by priest employees was allowed to continue. The 1985 Confidential Report became the playbook of fraud to be wielded against the unsuspecting and trusting minor victims of sexual abuse by the Defendants’ clergy employees.

42. The Defendants’ chose to knowingly and intentionally misrepresent to the public, including the Plaintiff and his parents, the facts pertaining to the prevalence of clergy sexual abuse of children. Said misrepresentations, simultaneously coupled with the Defendants’ acts of fraudulent concealment of said facts, were made with the express purpose of instilling in the Plaintiff and his parents a false sense of security that the Plaintiff would be safe in the presence of its clergy, including Father Mercure. If the Defendants had presented the public, including the Plaintiff and the Plaintiff’s parents, with the slightest suspicion of the extent of pedophilia and child sexual abuse engaged in by multiple priest employees of the Defendant Diocese, including the contents of the Confidential Report, the Plaintiff and the Plaintiff’s parents would have been able to protect the Plaintiff by avoiding any isolated contact with Defendants’ priest employees.

43. The Defendants knew that disclosure of the extent of pedophilia and child sexual abuse among a significant percentage of its priest employees would cause not only a loss of parishioners, but exposure to substantial financial loss, all as acknowledged and set forth in the Confidential Report.

44. In order to protect its financial interests, the Defendants implemented a general practice and policy of both misrepresentation of facts and concealment of the truth designed to hide from its parishioners, including the Plaintiff and the Plaintiff’s parents, any information of sexual abuse committed by any of its priest employees.

45. Said general practice and policy of the Defendants to misrepresent and/or conceal information about the known sexual assaults of children by their priest employees included:

- (a) choosing to abuse the bond Defendants create with their parishioners to appeal to their faith for the purpose of encouraging victims and their families not to report abuse;
- (b) choosing to expend millions of dollars in order to purchase silence by soliciting secret settlement agreements with confidentiality provisions that required victims of sexual abuse and their families to prevent public or law enforcement scrutiny of clergy child sexual abuse;
- (c) choosing not to report abuse to parents of children who have been sexually abused;
- (d) choosing not to report abuse to law enforcement authorities or governmental child protection agencies;
- (e) choosing to use euphemisms, codes and misleading designations in their investigative reports, and sanitizing their internal records to disguise or eliminate complaints and information of its clergy's sexual abuse of minors;
- (f) responding to disclosures of clergy sexual abuse of children by transferring said clergy to other unsuspecting parishes in a new location, rather than removing them from ministry, in order to contain, coverup, and prevent knowledge and information of said priest employees' sexual abuse of minors from being disclosed to the public;
- (g) failing to warn and otherwise disclose to their religious community the significant percentage of Roman Catholic priests employed throughout the entire national and international Roman Catholic system who were known to be pedophiles and had committed sexual abuse of minors;
- (h) crafting and disseminating to the public and its religious members a media marketing plan and public relations campaign to falsely portray the Catholic Church as being respectful, protective and caring for its minor parishioners;
- (i) insuring that clergy investigations would be deficient or biased by utilizing untrained, conflicted, or biased individuals to make credibility determinations;

- (j) cloaking investigation reports or complaints with a claimed absolute confidentiality or immunity by filing the reports in self-defined “secret archives”;
- (k) using church-run treatment facilities that regularly relied upon the “self-reports” of the offending clergy who typically downplayed or denied their criminal conduct, and that were not provided contrary information supplied by their victims;
- (l) creating an environment and a sense of non-accountability among its predator priest employees by continuing to fund them with housing, transportation, benefits and other resources which allowed them to locate, groom and assault more children; and
- (m) generally showing willful indifference to child victims of clergy abuse and failing to take reasonable steps to disclose and prevent sexual assaults and abuse of children by its clergy, including Father Mercure.

46. Said general practice, pattern, and policy of fraudulently concealing information pertaining to the extent of pedophilia and child sexual abuse among its priest employees, as well as information pertaining to any of its priest employees who had exhibited propensities and proclivities of sexual abuse, were enhanced by the Defendant Diocese making false and material representations of fact and fraudulent omissions and concealments of fact relating to the Defendant Diocese’s said policy, pattern and practice of transferring abusive priest employees, and specifically Father Mercure, to unsuspecting parishes outside of the area where the sexual abuse had taken place.

47. Upon information and belief, the Defendant Diocese reassigned Father Mercure in 1978 and transferred him from his position as pastor of Our Lady of the Assumption Church in Latham, New York to Defendant Diocese’s St Theresa of Avila Church in Albany, New York.

48. Upon information and belief, said reassignment and transfer of Father Mercure from Our Lady of The Assumption Church to St. Theresa of Avila Church was fraudulently motivated by the Defendant Diocese’s intent to conceal the receipt of information of sexual assaults by Father Mercure against minors.

49. Upon information and belief, the Defendant Diocese reassigned Father Mercure in 1982 and transferred him from his position as pastor of St. Theresa of Avila Church to the Defendant Diocese's Our Lady of the Annunciation in the Town of Queensbury, New York.

50. Upon information and belief, Defendant Diocese's reassignment and transfer of Father Mercure from St. Theresa of Avila Church to Our Lady of the Annunciation Church was fraudulently motivated by the Defendant Diocese's intent to conceal the receipt of information of sexual assaults by Father Mercure involving minors.

51. Upon information and belief, the Defendant Diocese reassigned Father Mercure in 1991 and transferred him from his position as pastor of Our Lady of the Annunciation Church to Defendant Diocese's St. Mary's Church of Glens Falls, New York.

52. Upon information and belief, said reassignment and transfer of Father Mercure from Our Lady of the Annunciation Church to St. Mary's Church of Glens Falls was fraudulently motivated by the Defendant Diocese's intent to conceal the receipt of information of sexual assaults by Father Mercure involving minors.

53. Upon information and belief, during portions of 1995 and/or 1996, the Defendant Diocese transferred Father Mercure to a treatment facility for inpatient therapy to address Father Mercure's condition of sexual deviancy and pedophilia.

54. Upon information and belief, said transfer of Father Mercure for inpatient therapy was fraudulently motivated by the Defendant Diocese's intent to conceal the receipt of information of sexual assaults by Father Mercure involving minors, and the intent to create a false narrative in the event of potential disclosure of such assaults that the Defendant Diocese had taken responsible action to address the sexual deviancy of Father Mercure.

55. Although the Defendant Diocese had knowledge of Father Mercure's condition of pedophilia and of his commission of sexual assaults on minors, the Defendant Diocese failed to disclose such information to the general public or its parishioners. Instead, the Defendant Diocese retained the services of Father Mercure as a pastor and reassigned him in 1996 to Defendant Diocese's St. Mary's Church in Clinton Heights, New York.

56. Upon information and belief, the Defendant Diocese reassigned Father Mercure in 1997 and transferred him from his position as pastor of St. Mary's Church in Clinton Heights to Defendant Diocese's Sacred Heart Church and St. William's Church in Troy, New York.

57. Upon information and belief, said reassignment and transfer of Father Mercure from St. Mary's Church in Clinton Heights to Sacred Heart Church and to St. William's Church was fraudulently motivated by the Defendant Diocese's intent to conceal the receipt of information of sexual assaults by Father Mercure involving minors.

58. Upon information and belief, the Defendant Diocese required Father Mercure in 2000 to attend a sabbatical at Pontifical North American College in Rome.

59. Upon information and belief, said attendance of Father Mercure at said sabbatical was fraudulently motivated by the Defendant Diocese's intent to conceal receipt of information of sexual assaults by Father Mercure involving minors.

60. The aforescribed pattern and practice of transferring sexually abusive priest employees from parish to parish was not a practice limited to Father Mercure, but was a practice deliberately employed by the Defendant Diocese with respect to all of its sexually abusive priest employees with the motive and intent to avoid the financial damage and scandal that would be suffered by the Defendant Diocese in the event of public disclosure of the extent of pedophilia among its priest employees.

61. In order to implement efficiently its general practice of concealment of information pertaining to its sexually abusive priest employees, Defendant Diocese deliberately chose to engage in the above described strategies and practices, and knowingly made the above described false and material representations, fraudulent omissions and concealments of truth.

62. The Defendants made said false and material representations, fraudulent omissions and concealments of truth, and failures to disclose, in contemplation of, and to induce, reliance thereon by the Plaintiff and the Plaintiff's parents who had no knowledge of their truth or falsity.

63. The Plaintiff and Plaintiff's parents justifiably relied upon the Defendants' false and material representations, fraudulent omissions and concealments, and failures to disclose information pertaining to the pervasive sexual abuse committed by its clergy, including Father Mercure. As a result of said justifiable reliance, the Plaintiff and the Plaintiff's parents allowed the Plaintiff to be alone with a predator priest, without supervision or means of protection against the horrific sexual assault perpetrated upon the Plaintiff by Father Mercure.

64. As a result of the above described conduct, the Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has been prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; and will sustain loss of earnings and earning capacity. Said loss and damages represent a sum that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

**SECOND CAUSE OF ACTION
NEGLIGENCE**

65. The Plaintiff realleges and incorporates by reference herein each and every allegation contained hereinabove as though fully set forth and brought in this cause of action.

66. Plaintiff is informed and believes, and on that basis alleges, that prior to and during the early incidents of Father Mercure's sexual abuse of the Plaintiff, the Defendants knew or should have reasonably known that a significant percentage of Defendant Diocese's priest employees, including Father Mercure, had been, or were capable of, sexually assaulting the Plaintiff or other children.

67. By reason of the misrepresentations and concealments of relevant facts of clergy child sexual abuse, the Plaintiff was induced to feel, and in fact did feel, great trust, faith and confidence in the Defendants and in Father Mercure as his religious advisor and mentor. Accordingly, the Plaintiff's care, welfare and physical custody were entrusted to the Defendants.

68. Defendants voluntarily accepted the entrusted care of the Plaintiff. As such, the Defendants owed the Plaintiff, a minor child, a special duty of care, in addition to a duty of ordinary care, and owed the Plaintiff the higher duty of care that adults dealing with children owe to protect them from harm. The duty to protect and warn arose from the special, trusting, confidential and fiduciary relationship between the Defendants and the Plaintiff.

69. The Plaintiff is informed and believes, and on that basis alleges, that the Defendants breached their duties of care to the minor Plaintiff by choosing to allow Father Mercure to come into contact with the minor Plaintiff, without supervision; by choosing to falsely hold out its priest employees, including Father Mercure, to the Plaintiff and to his parents as being in good standing, celibate, and trustworthy; by choosing not to adequately supervise and/or fire Father Mercure as an employee who they permitted and enabled to have isolated access to the Plaintiff; by choosing not to investigate or otherwise confirm or deny such facts of sexual assaults by Father Mercure; by choosing not to tell, or by choosing to conceal from, the Plaintiff and his parents that a significant percentage of its priest employees, including Father Mercure, were or may have been committing sexual assaults and abusing minors; and by failing to tell, or by concealing from, the Plaintiff's parents that the Plaintiff was or may have been sexually abused after the Defendants knew or should have known that Father Mercure may have previously abused others, thereby enabling the Plaintiff to continue to be endangered and sexually abused, and creating the circumstance where the Plaintiff was less likely to receive medical/mental healthcare or treatment, thus exacerbating the harm done to the Plaintiff.

70. As a result of the above described conduct, the Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has been prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; and will sustain loss of earnings and earning capacity. Said loss and damages represent a sum that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

**THIRD CAUSE OF ACTION
NEGLIGENT SUPERVISION**

71. Plaintiff realleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

72. The facilities and premises of Defendant Diocese and Defendant Annunciation churches being religious educational institutions for the benefit of minors where all of the parishioner minors are entrusted to priests, nuns, religious education employees, teachers and volunteers, including Father Mercure, the Defendants expressly and implicitly misrepresented that these individuals, including Father Mercure, were not a sexual threat to children and others who would fall under Father Mercure's influence, control, direction and guidance.

73. The Defendants negligently failed to supervise Father Mercure in his position of trust and authority as a religious advisor and mentor, where he was able to commit wrongful acts and sexual assaults against the Plaintiff. Although the Defendants had a duty to do so, the Defendants breached their duty by choosing not to provide reasonable supervision of Father Mercure and by failing to take reasonable measures to prevent sexual abuse of minors, including the Plaintiff.

74. Plaintiff is informed and believes, and on that basis alleges, that at no time during the period of time alleged did the Defendants choose to have in place a system or procedure to reasonably investigate, supervise and monitor its staff or its priest employees, including Father Mercure, to prevent pre-sexual grooming and sexual abuse of children, nor did they choose to implement a system or procedure to oversee or monitor conduct toward minors in the care of the Defendants, its priest employees or Father Mercure.

75. The Defendants and each of them were or should have been aware and understood how vulnerable children were to sexual assault and abuse by its religious advisors, mentors, and other persons of authority within the Defendant Diocese's churches, including Father Mercure.

76. The Plaintiff is informed and believes, and on that basis alleges, that the Defendants knew or should have known that a significant percentage of its Defendant Diocese's priest employees, including Father Mercure, posed a risk of committing sexual assaults and abuse to minors, including the Plaintiff, giving rise to the duty to report such assaults to law enforcement and the duty to warn the Plaintiff's parents of the said risk posed by the Defendants' clergy employees.

77. The Defendants' aforescribed conduct was a breach of their duties to the Plaintiff.

78. As a result of the above described conduct, the Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has been prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; and will sustain loss of earnings and earning capacity. Said loss and damages represent a sum that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

FOURTH CAUSE OF ACTION NEGLIGENT RETENTION

79. Plaintiff realleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

80. By virtue of the Plaintiff's special, fiduciary relationship with the Defendants and each of them, and Defendants' relation to Father Mercure, the Defendants owed the Plaintiff a duty not to retain Father Mercure as an employee, given his sexual and exploitive propensities of which the Defendants knew or reasonably should have known had they chosen to engage in a meaningful and adequate supervision of him as one of their employees, particularly given what Defendant Diocese knew about the high level of sexual assaults on children by the Catholic clergy nationwide and in Defendant Diocese.

81. As a religious institution and operator of a church where minors, including the Plaintiff, were entrusted to its employees and agents, the Defendants expressly and implicitly misrepresented that its priest employees, including Father Mercure, were not a sexual threat to children, including the Plaintiff, who would fall under Father Mercure's influence, control, direction and guidance.

82. The Plaintiff is informed and believes, and on that basis alleges, that at no time during the period of 1986-1989 did the Defendants have in place a system or procedure to reasonably investigate, supervise and monitor its priest employees, including Father Mercure, to prevent pre-sexual grooming and sexual abuse of children, nor did they choose to implement a system or procedure to oversee or monitor Father Mercure's ongoing assaults towards minors and others in the Defendants' care, including the Plaintiff.

83. The Defendants and each of them were or should have been aware and understood how vulnerable children were to sexual assaults and abuse by persons of authority, such as Father Mercure, within the control of the Defendants.

84. Plaintiff is informed and believes, and on that basis alleges, that the Defendants were put on notice prior to and including the period of 1986-1989, and should have known, that a significant percentage of its priests, including Father Mercure, had previously engaged in inappropriate and abusive sexual assaults, and that it was or should have been foreseeable that Father Mercure was engaging, or would engage, in activities of sexual assaults and abuse of the Plaintiff and others, under the cloak of his authority, confidence, and trust, all bestowed upon him through the express and implicit representations of the Defendants.

85. Even though the Defendants knew or should have known of these abusive activities by a significant percentage of its priest employees, including Father Mercure, the Defendants chose not to use reasonable care to investigate Father Mercure and chose to do nothing to investigate, supervise or monitor Father Mercure over the course of his employment with the Defendants in order to ensure the safety of minors, including the Plaintiff.

86. The Plaintiff is informed and believes, and on that basis alleges, that the Defendants' prior knowledge of the sexual propensities and proclivities of a significant percentage of their priest employees, including Father Mercure, gave rise to a duty to report such information to law enforcement, to the Plaintiff and to the Plaintiff's parents, which the Defendants chose not to do.

87. By choosing not to report to law enforcement, to the Plaintiff and to Plaintiff's parents the information pertaining to the sexual propensities and proclivities of a significant percentage of Defendant Diocese' priest employees, including Father Mercure, the Defendants thereby unreasonably and wrongfully exposed the Plaintiff to the sexual assaults and abuse of the Plaintiff by Father Mercure.

88. The Defendants' conduct was a breach of their duty to protect the Plaintiff.

89. As a result of the above described conduct, the Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has been prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; and will sustain loss of earnings and earning capacity. Said loss and damages represent a sum that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

**FIFTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

90. Plaintiff realleges and incorporates by reference herein each and every allegation contained hereinabove as though fully set forth and brought in this cause of action.

91. As described above, the Defendants' conduct was grossly negligent, and constituted an aggravated and magnified failure to use that care which a reasonable person would use to avoid injury to other people.

92. As a result of Defendants' gross negligence, the Plaintiff has suffered serious emotional distress.

93. The serious emotional distress suffered by Plaintiff is such that a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of this case, as described herein.

94. The Defendants' breach of duty and gross negligence was the legal cause and proximate cause of the serious emotional distress suffered by the Plaintiff.

95. As a result of the above described conduct, the Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has been prevented and will continue to be prevented from performing daily activities and

obtaining the full enjoyment of life, and will sustain loss of earnings and earning capacity. Said loss and damages represent a sum that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

SIXTH CAUSE OF ACTION
PREMISES LIABILITY/FAILURE TO WARN

96. Plaintiff realleges and incorporates by reference herein each and every allegation contained hereinabove as though fully set forth and brought in this cause of action.

97. At all times herein mentioned, Defendant Annunciation was in possession and ownership of the real property in the Town of Queensbury, and had the right to manage the use and control of that property where Father Mercure groomed and sexually assaulted the Plaintiff.

98. At all times herein mentioned, the Defendants knew or should have known that a significant percentage of the Defendant Diocese's priest employees, including Father Mercure, had a history of sexual assaults against minors, and that any child present at Defendant Diocese's churches, among other locations, was at risk to be sexually abused by one of its priest employees, including Father Mercure.

99. It was foreseeable to the Defendants that any one of a significant percentage of the Diocese's priest employees, including Father Mercure, given their known sexual proclivities and propensities, would sexually assault children, including the Plaintiff, if Defendants continued to allow the Diocese's priest employees to have custody, and unsupervised contact and control of children, including the Plaintiff. Said foreseeable harm imposed a duty upon the Defendants to publish to their parishioners a warning that there was a significant risk that its premises could be occupied by a sexual predator and that they should avoid unsupervised contact between its clergy and children.

100. Because the Plaintiff was a parishioner, altar boy and student of Defendant Annunciation's church and church school, a special, fiduciary relationship existed between the parties, and the Defendants owed a heightened duty to the Plaintiff to protect the Plaintiff from reasonably foreseeable dangerous conditions, including the abusive acts of Father Mercure, which existed upon their premises, and to warn their parishioners of the risk of same.

101. By choosing to allow Father Mercure to be in a position of authority, custody and contact with young children, including the Plaintiff, and by failing to warn the children and their families, including the Plaintiff, of the threat posed by a significant percentage of its priest employees, including Father Mercure, the Defendants breached their duty of care to all children, including the Plaintiff. In addition, the Defendants knew or had reason to know that they had the ability to control Father Mercure and knew, or should have known, of the necessity and opportunity for exercising such control, but choosing not to do so. The Defendants' conduct was grossly negligent and constituted an aggravated and magnified failure to use that care which a reasonable person would use to avoid injury to other people.

102. The Defendants' use and management of its churches, rectories, church schools and premises created a dangerous condition and an unreasonable risk of harm to children, including the Plaintiff, by their choice to allow Father Mercure to occupy a position of authority and to give him the power to supervise, have custody of, and unsupervised contact with young children, including the Plaintiff, at the Defendants' premises, church and church school located in the Town of Queensbury.

103. As a result of the aforescribed dangerous conditions created and maintained by the Defendants on their premises, and their failure to warn of same, Father Mercure was able to sexually assault the Plaintiff.

104. The dangerous conditions created by the Defendants were the proximate cause of the Plaintiff's injuries and damages.

105. As a result of the above described conduct, the Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has been prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; and will sustain loss of earnings and earning capacity. Said loss and damages represent a sum that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

SEVENTH CAUSE OF ACTION
STATUTORY VIOLATION – GENERAL BUSINESS LAW §349 & §350

106. Plaintiff realleges and incorporates by reference herein each and every allegation contained hereinabove as though fully set forth and brought in this cause of action.

107. At all times herein mentioned and relevant thereto, including prior to 1990, the Defendant Diocese operated schools, hospitals, parishes, recreational facilities and other entities within the State of New York.

108. At all times herein mentioned and relevant thereto, including prior to 1990, the Defendant Diocese supplied educational and other services to its parishioners and to the public, in exchange for which the Defendant Diocese solicited funds from said parishioners and members of the public for the ostensible purpose of supporting said services.

109. At all times herein mentioned and relevant thereto, including prior to 1990, the services provided to members of the public by the Defendant Diocese generated annual revenues believed to exceed twenty-five million dollars (\$25,000,000).

110. The Plaintiff, during the approximate period of 1986 to 1989, was a student in the church school operated by the Defendants in the Town of Queensbury, and also participated in the recreational and religious services sponsored by the Defendants.

111. In consideration of the services provided by the Defendants to the general public and to the Plaintiff, the public, including the parents of the Plaintiff, contributed money and volunteer time to the Defendants to support said services.

112. The aforescribed acts or practices of the Defendants furnishing educational, medical, recreational, religious and other services to the general public in the State of New York constituted the conduct of a business, trade or commerce within the scope of the provisions of §349 and §350 of the NYS General Business Law.

113. The Defendants knew that disclosure to the public of information pertaining to the extent of child sexual abuse by its clergy employees would have a devastating and detrimental effect upon the ability of the Defendants to generate revenue.

114. In order to protect their revenue stream from the financial damage to be expected from such public disclosure of the prevalence of child sexual abuse by its clergy, the Defendants

intentionally implemented tactics, acts and practices that were deceptive and misleading in material respects, and that were designed to conceal the truth of clergy abuse from the public. Said deceptive acts, practices, misrepresentations, and omissions and concealments of truth were likely to mislead a reasonable person and consumer acting reasonably under the circumstances alleged herein, to their detriment and damage.

115. The deceptive acts, practices, misrepresentations, and omissions and concealments foisted upon the unsuspecting public by the Defendants consisted of:

- (a) disseminating to the public and its religious members a media marketing plan and public relations campaign to falsely portray the Catholic Church as being respectful of, protective of, and caring for, its minor parishioners;
- (b) falsely representing to the public and its parishioners, including the Plaintiff, that all of their clergy were priests of good standing, persons of the highest morality, and men who could be entrusted with the religious, moral and physical care of youths entrusted to them;
- (c) concealing from the public the truth of the sexual abuse of children committed by a significant percentage of its clergy by choosing to engage in the following deceptive acts and practices:
 - encouraging victims not to report abuse;
 - soliciting confidentiality agreements with victims in order to purchase and require their silence;
 - choosing not to report abuse to parents of children who may have been abused;
 - choosing not to report child sexual abuse to law enforcement authorities;
 - choosing to use euphemisms, codes and misleading designations in their investigative reports, or otherwise sanitizing their internal records to disguise or eliminate complaints and other information of its clergy's sexual abuse of minors;
 - Choosing to transfer priest employees to other parishes in a new location, rather than removing them from ministry, in order to contain

and prevent knowledge and information of said priests employees' sexual abuse of minors being disclosed to the public;

- choosing not to disclose to their religious community the significant percentage of Roman Catholic priest employees throughout the entire Roman Catholic Church who were known to be pedophiles and had committed sexual abuse of minors;

- choosing to insure that clergy investigations would be deficient or biased by utilizing untrained individuals to make credibility determinations;

- choosing to cloak investigation reports with a claimed absolute confidentiality by filing the reports in self-defined "secret archives";

- choosing to use church-run treatment facilities that regularly relied upon the "self-reports" of the offending clergy who typically downplayed or denied their criminal conduct, and that were not provided contrary information supplied by their victims; and,

- choosing to create an environment and a sense of non-accountability among its predator priest employees by continuing to fund them with housing, transportation, benefits and other resources which allowed them to locate, groom and assault more children.

116. By reason of the deceptive acts and practices of the Defendants in the furnishing of services in the State of New York and in the conduct of the Defendants' state-wide business and commerce, the Defendants violated §349 of the NYS General Business Law.


117. By reason of the false advertising of the purported safety of the children who were unwittingly attracted to the services publicly offered by the Defendants, the Defendants violated §350 of the NYS General Business Law.

118. By reason of the foregoing, the Plaintiff and his parents justifiably relied upon the Defendants' acts of deception and false representations, and by doing so were deceived and lulled into a false sense of security whereby the Plaintiff was placed into a predatory environment of horrific abuse by the Defendants' clergy.

119. As a result of the above described conduct, the Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has been prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; and will sustain loss of earnings and earning capacity. Said loss and damages represent a sum that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

WHEREFORE, the Plaintiff prays for a judgment against the Defendants, jointly and severally, in an amount which will fairly compensate the Plaintiff, which amount exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over the causes of action alleged herein, together with interest, costs and disbursements of this action.

Dated: August 22, 2019


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**STATE OF NEW YORK
SUPREME COURT**

WARREN COUNTY

M. S. ,

Plaintiff,

-against-

**THE ROMAN CATHOLIC DIOCESE OF ALBANY,
NEW YORK, INC.,**

and,

**THE CHURCH OF OUR LADY OF THE ANNUNCIATION,
QUEENSBURY, NEW YORK,**

Defendants.

SUMMONS AND COMPLAINT

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